

VERONICA RUPERTO, PETITIONER, VS. CEFERINO FERNANDO AND LUCIO M. TIANCO, JUDGE OF MUNICIPAL COURT OF RIZAL CITY, RESPONDENTS.

G.R. No. L-2450. May 31, 1949

Ponente: FERIA, J.

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FERIA, J.:

From the record before us, it appears that a complaint of ejectment was filed by Ceferino Fernando, one of the respondents in this case, against Veronica Ruperto, petitioner, with the municipal court of Rizal city, in which the following, among others, is alleged:

"2. That the plaintiff is the exclusive and lawful lessee of a store space at the Libertad Public Market, Rizal City, by virtue of a lease contract executed and entered into by and between Rufino F. Mateo, Mayor, Rizal City, and Ceferino Fernando, as lessor and lessee respectively, under date of March 6, 1948, as per copy of the lease contract hereto attached as Exhibit A and forming part of his complaint;"

The defendant filed a motion to dismiss on the ground (1) that the court has no jurisdiction over the case because it is not capable of pecuniary estimation, and (2) that the complaint does not state a cause of action.

An opposition to motion to dismiss was filed by the plaintiff in which the latter states the following:

"The question at issue is clear: Who is legally entitled to the possession of the space in the Libertad Public Market? In other words: Who has a better leasehold right? The plaintiff or the defendant? The answer is inescapable, the plaintiff has a better leasehold right. The defendant claims she has a better leasehold right based upon a contract executed by and between the city mayor and the plaintiff. The city treasurer's permit was issued not in accordance with the prescribed rules, regulations and practice of the city in awarding market stalls. It is the practice of the city to lease store space by the treasurer. The court has jurisdiction, therefore. The jurisdiction of the court in an action of forcible entry and detainer is not lost even if the question of ownership or title is raised in the answer of the defendant as held in the case of *Mediran vs. Villanueva*, 37 Phil., 752. The fundamental issue, to repeat, in the instant case is that the justice of the peace court has jurisdiction to adjudicate the right of possession, and the defendant in an action before the justice of the peace to recover possession cannot deprive the court of such jurisdiction by merely claiming ownership or title to the property (*Mediran vs. Villanueva*, 37 Phil., 752)."

The municipal court denied the motion to dismiss for lack of merit on the ground that the defendant bases his contention that the court has no jurisdiction over the case on facts not alleged in the complaint, and hence the filing of the present civil action of certiorari, which may properly be considered as of prohibition, because the principal remedy sought is to prevent the respondent judge from taking cognizance of the case for lack of jurisdiction.

The respondent to judge is not correct in holding that, in a motion to dismiss on the ground of lack of jurisdiction, the defendant cannot "base his arguments on question of facts not touched in the complaint and which partakes

the nature of special defenses, to be proved by presentation of evidence." A motion to dismiss under Rule 8 of the Rules of Court, is not like a demurrer provided for in the old Code of Civil Procedure that must be based only on the facts alleged in the complaint. Except where the ground is that the complaint does state no cause of action which must be based only on the allegations in the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint; and that is the reason why it is set for hearing for the presentation of evidence in support of and against the contention of the defendant.

In the present case, although no evidence was adduced in support of the contention of the defendant, the complaint and the opposition to the motion to dismiss clearly show that the court has no jurisdiction over the subject-matter of the action of the plaintiff, because it is neither an action of forcible entry nor of illegal detainer, but an action for the recognition of the plaintiff's preferred right to the use and occupancy of the stall in question in the Libertad Public Market against the claim of the defendant, and therefore not capable of pecuniary estimation. In the case of *Torres vs. Ocampo* (80 Phil., 36), this Court held the following that is squarely applicable to the present case for the determination of the nature of plaintiff's action.

"The action of the plaintiff against the defendant is not an action of forcible entry, for the simple reason that it is not an action instituted by a person who was in possession of a land or building against a person who has deprived him of the possession thereof by force, intimidation, threat, strategy or stealth, within one year from such unlawful deprivation. Assuming, without deciding, for the purpose of this decision that a market stall is a building or land within the meaning of Rule 72, Rules of Court; whatever right the plaintiff may have to occupy the market stall in question, originated upon the alleged award to plaintiff by the City Health Officer of Manila. And not having entered into possession under that award or lease of the market stall in dispute, plaintiff had acquired no right in the leased property in the nature of a right in rem, which third persons were bound to respect or not to infringe.

"The action brought by the plaintiff against the defendant was not an action of illegal detainer, because according to section 1, Rule 72 this action is for the recovery of possession of any land or building, instituted within one year from date of illegal possession, by a person against whom the possession of any land or building is being unlawfully withheld by another after the right of the latter to hold possession by virtue of any contract, express or implied, with the plaintiff has expired or terminated. In the present case, there was no contract whatsoever, express or implied, between plaintiff and defendant for the possession of the market stall, and hence no expiration or termination of the latter's right to hold possession thereof under contract."

In view of the foregoing, it is evident that the municipal court of Rizal City has no jurisdiction over the case, and the respondent judge is therefore ordered to desist and refrain from further proceeding in the present case, with costs against the respondent Ceferino Fernando. So ordered.

Ozaeta, Paras, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

DISSENTING

PERFECTO, J.:

We are opinion that the grounds upon which the majority have decided to reverse the action of the municipal court of Rizal City are too technical for purposes of substantial justice.

The complaint filed by Ceferino Fernando has raised a case of illegal detainer and, therefore, within the jurisdiction of inferior court where it was instituted.

The purpose of the summary proceedings outlined by the rules in cases of illegal detainer is for expeditious

settlement of controversial possession, as such controversies may give occasion to disturbance to peace and order. The purpose is to nip in the bud a dispute which may lead to more serious conflicts and consequences. That purpose is defeated by the majority decision.

We vote to deny the petition.

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